

GAO

Report to the Chairman,
Committee on Government Reform,
House of Representatives

May 2002

INSPECTORS GENERAL

Comparison of Ways Law Enforcement Authority Is Granted



G A O

Accountability * Integrity * Reliability

Report Documentation Page

Report Date 22MAY2002	Report Type N/A	Dates Covered (from... to) -
Title and Subtitle INSPECTORS GENERAL: Comparison of Ways Law Enforcement Authority Is Granted		Contract Number
		Grant Number
		Program Element Number
Author(s)		Project Number
		Task Number
		Work Unit Number
Performing Organization Name(s) and Address(es) U.S. General Accounting Office 441 G Street NW, Room LM Washington, D.C. 20548		Performing Organization Report Number GAO-02-437
Sponsoring/Monitoring Agency Name(s) and Address(es)		Sponsor/Monitor's Acronym(s)
		Sponsor/Monitor's Report Number(s)
Distribution/Availability Statement Approved for public release, distribution unlimited		
Supplementary Notes		
Abstract see report		
Subject Terms		
Report Classification unclassified	Classification of this page unclassified	
Classification of Abstract unclassified	Limitation of Abstract SAR	
Number of Pages 30		

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Abbreviations

CBO	Congressional Budget Office
DOD	Department of Defense
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
GSA	General Services Administration
HHS	Department of Health and Human Services
IG	Inspectors General
MOU	memorandum of understanding
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PCIE	President's Council on Integrity and Efficiency
TIGTA	Treasury Inspector General for Tax Administration
USDA	U.S. Department of Agriculture
USMS	U.S. Marshals Service



United States General Accounting Office
Washington, DC 20548

May 22, 2002

The Honorable Dan Burton
Chairman, Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

As a part of their responsibilities federal inspectors general (IGs) offices conduct criminal investigations of fraud, waste, and abuse in federal departments and programs. IG criminal investigators exercise law enforcement authority to make warrantless arrests, obtain and execute warrants, and carry firearms. Because IGs generally do not possess permanent statutory law enforcement authority, most presidentially appointed IGs have to request temporary deputation from the Department of Justice (DOJ).¹ However, three presidentially appointed IGs²—U.S. Department of Agriculture (USDA), Department of Defense (DOD), and Treasury Inspector General for Tax Administration (TIGTA)—possess permanent statutory law enforcement authority and do not need to obtain DOJ's approval.

This report responds to your request that we identify the similarities and differences between providing statutory authority and deputation to presidentially appointed IGs. Specifically, you asked us to

- compare the statutory authority and deputation in terms of the scope of law enforcement authority granted to the IG criminal investigators, amount of supervision and training of criminal investigators, and the extent of oversight required;

¹Deputation is the process through which some criminal investigators derive their law enforcement authority. DOJ's U.S. Marshals Service is authorized to deputize selected persons to perform the functions of a deputy U.S. Marshal whenever considered appropriate.

²These three presidentially appointed IGs have what has been referred to as full statutory law enforcement authority, giving their investigators the ability to, in general, make certain arrests, carry firearms, and execute search warrants. For this report, references to "statutory authority" are used to refer to certain common characteristics of these three presidentially appointed IGs identified to us as having statutory law enforcement authority comparable to the law enforcement authority granted to the deputized IGs.

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- obtain the views of (1) IGs using deputation (deputized IGs) regarding whether statutory authority would improve their investigative practices or impact their current jurisdictions; and (2) other federal officials, including DOJ and the Office of Management and Budget (OMB), regarding statutory authority and deputation;
 - estimate the cost implications if legislation were enacted to grant statutory authority to those IGs who do not possess such law enforcement authority.

To address these areas, we interviewed officials from various federal departments and agencies, including USDA, DOD, and DOJ, the FBI, and the U.S. Marshals Service (USMS), TIGTA, and Department of Health and Human Services (HHS); Congressional Budget Office (CBO), General Services Administration (GSA), OMB, and Office of Personnel Management (OPM). We compared and analyzed information to determine similarities and differences associated with statutory authority and deputation. To obtain the views about specific aspects of law enforcement authority, we surveyed and received responses from all 23 deputized IGs. We reviewed CBO's cost analysis to determine the costs involved in switching from deputation to statutory authority.

Results in Brief

We found that IG criminal investigators who are deputized do not significantly differ in terms of their scope of law enforcement authority, supervision, and training from their counterparts who have statutory law enforcement authority. We also found that deputized IGs receive additional oversight over their law enforcement authority. For example, deputized IGs must renew their law enforcement authority every 3 years and involve the FBI when initiating certain criminal investigations and other sensitive investigations.³

In responding to our questionnaire, 15 of the 23 deputized IGs reported that having statutory authority would improve their criminal investigative practices to at least some extent and 9 of these reported that statutory authority would improve their investigative practices to a great or very great extent. Three deputized IGs said it would enhance their recognition as fully authorized officers in the law enforcement community. DOJ said it is currently considering its position on ways to provide law enforcement

³As of January 2001, deputized IGs renewed their law enforcement authority for a 3-year period, rather than annually.

authority to deputized IGs. OMB deferred the matter for DOJ's consideration.

Deputized IGs and other federal agencies including the CBO stated that granting statutory law enforcement authority to IGs who are currently deputized would have no significant effect on federal costs since it would involve replacing one system of review and oversight with another.

We requested comments on a draft of this report from the President's Council on Integrity & Efficiency⁴ (PCIE) and DOJ. The PCIE disagreed with our report message. The PCIE generally disagreed with the methodology we used for our work and with some of the conclusions they believe the report was making in regard to the impacts of using one form of law enforcement authority over another.

The PCIE questioned our methodology, which compared temporary deputation with permanent statutory law enforcement authority. They stated that we should have compared deputized IGs to the provisions in the legislation (S. 3144) proposed in the last Congress rather than provisions that authorize the three IGs who have statutory law enforcement authority—DOD, USDA, and TIGTA. The PCIE stated that the bill (S. 3144) was the only bona fide standard to compare against because it reflected the actual statutory authority that the deputized IGs were seeking. We compared deputation with the provisions of statutes that grant law enforcement authority to IGs in DOD, USDA, and TIGTA because these are the ways that IGs currently receive law enforcement authority. Importantly, the bill that the IGs referred to did not pass, and because provisions in any future legislation are subject to change, we did not believe it was appropriate to use provisions of S. 3144 in the comparison.

The PCIE stated that they disagree with the draft report's conclusion that unless significant cost savings can be associated with permanent statutory law enforcement authority, the current temporary deputation system should be retained. Our report does not state or imply such a conclusion. It accurately summarizes the information the IGs and other federal agencies, such as CBO, told us would be the cost impact of switching from

⁴The council is an interagency council comprised principally of presidentially appointed and Senate-confirmed IGs, which currently operates under Executive Order No. 12805 to coordinate and enhance the work of the IGs.

deputation to statutory law enforcement authority. The PCIE also stated that the report incorrectly concluded that the deputation process offers greater oversight and better professional standards than permanent statutory law enforcement authority. The report reaches no such conclusion. The report states that the current deputation process involved increased oversight, such as requiring deputized IGs to renew their law enforcement authority every 3 years with DOJ. The report does not conclude that one process is better than the other. The PCIE also stated that the deputation renewal process caused an administrative burden for USMS. Our work did not support such a conclusion. The USMS told us that the deputation process has improved and that renewing deputized IG's law enforcement authority was the easiest task of their deputation workload.

DOJ neither agreed nor disagreed with our draft report. DOJ requested that our report state that DOJ has not yet taken a position on providing law enforcement authority through either statute or deputation and that the issue is under review within the Administration. Officials from PCIE and DOJ also provided technical comments that we incorporated into the report as appropriate.

Background

The Inspector General Act of 1978, as amended, among other things, identified specific federal departments and agencies that are required to have IGs appointed by the president, by and with the advice and consent of the Senate.⁵ The act also requires each such IG to appoint an assistant inspector general for investigations to supervise the performance of investigative activities, including criminal investigations, relating to their agencies' programs and operations.

Although presidentially appointed IGs have the authority to conduct criminal investigations, the IGs have not been granted across-the-board statutory law enforcement authority.⁶ However, as the role of the presidentially appointed IGs in active investigations of criminal activity expanded, so too did their requests for deputation seeking the authority to make warrantless arrests, obtain and execute warrants, and carry firearms

⁵Inspector General Act of 1978 (Public Law 95-452), as amended, (codified at 5 U.S.C. App. 3).

⁶IGs do, however, have the across-the-board power to, for example, issue subpoenas for the production of information and documents, among other things, in the performance of their investigations.

to reduce requests for assistance from other law enforcement personnel in dangerous situations. Subsequently, 23 presidentially appointed IGs' criminal investigators received law enforcement authority through case-by-case deputation granted by the USMS. Under this process, the presidentially appointed IGs applied for deputation for each criminal investigator in each case where the need was anticipated. Upon completion of the case, the deputation and its accompanying law enforcement authority expired, and the process would start over again.

In 1995, in an effort to reduce paperwork and excessive delays, certain presidentially appointed IGs began receiving 1-year deputation law enforcement authority for criminal investigators.⁷ Appendix I provides a list of the 23 deputized IGs who requested and received annual deputation. As of January 2001, these deputized IGs renew their law enforcement authority for a 3-year period, rather than annually. This process includes (1) requesting temporary law enforcement authority and obtaining approval from DOJ, (2) submitting a formal deputation application to DOJ, and (3) taking an oath. Deputized IGs' criminal investigators must also adhere to the terms and conditions disclosed in a DOJ memorandum of understanding (MOU). The MOU is designed to provide DOJ guidance and oversight of IG criminal investigator training and conduct of criminal investigations.

Although not passed, proposed legislation (S. 3144) was introduced during the 106th Congress, which would have, among other things, provided criminal investigators in specified IG offices (see appendix I) with certain statutory law enforcement authorities. Under this bill, deputized IGs would (1) no longer be required to renew their law enforcement authority through the USMS; and (2) obtain a statutory basis for carrying firearms, making certain types of warrantless arrests, and executing warrants.

In addition, the bill contained provisions for oversight over the IGs. The bill, for example, provided for "peer reviews" of IGs by other IGs.⁸ (The results of such reviews would have been forwarded to the applicable IG

⁷The departments of Labor, Housing and Urban Development, State, and Transportation; Veterans Affairs, Social Security Administration, and the Small Business Administration were originally selected for the deputation pilot program.

⁸Although the bill was not enacted into law, the PCIE Investigations Committee prepared a draft *Guide for Conducting Qualitative Assessment Reviews for the Investigative Operations of the IGs* and is conducting a nine-month pilot field-test to finalize the guide. The pilot test is scheduled to end on April 30, 2002.

and the Attorney General) and required DOJ's continued oversight of IGs' activities, such as involving the FBI when initiating certain criminal investigations. In addition, the Attorney General would have the authority, under certain conditions, to rescind or suspend such law enforcement authority of these IGs.

Scope and Methodology

To compare the similarities and differences between providing statutory authority and deputation, we examined MOUs, federal statutes, operating manuals, and other pertinent documents between the two groups of IGs. We also interviewed officials involved with the deputation program and/or related efforts to obtain statutory authority for the deputized IGs. This included officials in Washington, D.C., from the USMS, FBI, DOJ's Criminal Division, OMB, and selected presidentially appointed IGs with deputation—HHS, GSA, DOJ IG, OPM, and the PCIE. In addition, we identified and interviewed three presidentially appointed IGs—USDA, DOD, TIGTA⁹—having statutory authority comparable to the law enforcement authority granted to deputized IGs. We obtained perspectives and relevant documents related to their use of law enforcement authority. We compared the scope of law enforcement authority, supervision, and training of IG criminal investigators for both methods.

To obtain views of deputized IGs on whether statutory authority would improve their investigative practices or impact their current jurisdictions, we surveyed and received responses from all 23 deputized IGs (see app. II for the questionnaire).¹⁰

To identify the cost and any savings that might result by switching from deputation to statutory authority, we reviewed congressional hearing documents and the CBO cost analysis associated with a recent legislative proposal. In addition, we interviewed officials from DOJ, OMB, CBO, and selected IGs to obtain applicable cost and savings information.

⁹Statutory law enforcement authority is exercised by these IGs either through specific statutory grants to the IGs or delegations by the agency head. To illustrate, USDA IG was granted statutory law enforcement authority in 1981 (P.L. 97-98) and TIGTA IG was granted statutory law enforcement authority in 1998 (P.L. 105-206). DOD IG was granted certain statutory law enforcement authorities in 1997 (P.L. 105-85) but has the authority to carry firearms under delegation from the Secretary of Defense (10 U.S.C. 1585).

¹⁰Prior to distributing the survey questionnaire, we pretested it with the deputized IGs from HHS and GSA and made revisions accordingly.

We performed our work from May 2001 through May 2002 in accordance with generally accepted government auditing standards.

Statutory and Deputized IGs' Law Enforcement Authority is Similar, but Differences Exist in Oversight Requirements

Regardless of the origin of law enforcement authority—either through statutory authority or deputation, IGs' scope of law enforcement authority, supervision, and training are similar. However, differences exist in the level of DOJ's oversight given to the deputized IGs by DOJ.

Similarities

Whether under statute or deputation, IGs' law enforcement authority is similar. Our comparative analysis revealed that IGs have comparable duties, practices, and standards regarding their (1) scope of law enforcement authority to make warrantless arrests, obtain and execute warrants, and carry firearms; (2) supervision of criminal investigators, which generally provides for day-to-day oversight by an agency official such as a special agent-in-charge; and (3) training standards. For example, IG criminal investigators with statutory authority and IG criminal investigators with deputation train together at the Federal Law Enforcement Training Center located in Glynco, Georgia. The facility provides both groups the same basic training curriculum in matters such as firearms, search and seizure, and arrest procedures as well as criminal investigator-specialized training.

Differences

We found differences in the level of DOJ oversight for IGs who are deputized by DOJ. Deputized IGs must renew their law enforcement authority every 3 years, while IGs with statutory authority do not have this requirement. DOJ established a process for granting and renewing deputation that allows its deputy attorney general, Criminal Division, FBI, and the USMS to review certain aspects of deputized IGs activities. The purpose of this process is to determine whether deputized IGs continue to meet standards for (1) keeping firearms skills current, (2) providing adequate training, and (3) coordinating with federal prosecutors and other federal law enforcement agencies.

As part of DOJ's deputation process, deputized IGs are required to report to DOJ annually on the results they achieved, as a condition for renewing their deputation. Table 1 summarizes the results achieved with deputation from 1998 through 2000 that we identified from deputized IG responses to our survey.¹¹

Table 1: Deputized IGs' Law Enforcement Results Reported to DOJ from 1998 through 2000

Types of activity^a	Total
Arrests	4,762
Searches	1,298
Protection of witness	576
Dangerous surveillance of investigative subjects	11,445
Temporary custody of federal prisoners (outside controlled environment)	1,086
Dangerous interviews	16,389
Support for undercover operations	4,561
Restraining orders	73
Dangerous subpoena service	3,791
Assisting in electronic surveillance	8,502

^aThe results exclude two deputized IGs, because the data were not provided by types of activity.

Both DOJ and FBI officials told us that the reporting requirement is being re-evaluated, and DOJ said that it is outdated and no longer used as a condition for renewing deputized IGs' law enforcement authority. Furthermore, DOJ said that no deputized IG has been denied its deputation renewal request.

In addition, deputized IGs are required to notify the FBI when initiating certain criminal investigations as well as work jointly with the FBI on certain other sensitive investigations.¹² The three presidentially appointed IGs with statutory authority do not have a specific statutory requirement to coordinate their investigations with the FBI. DOJ requires deputized IGs

¹¹The 3-year period (1998 through 2000) for which we requested information might not have been applicable to each deputized IG based on the MOU date they entered USMS's deputation program. Also, DOJ's IG did not provide us with reporting results, citing that it submits the agency's annual reports directly to the deputy attorney general rather than to the Criminal Division.

¹²Deputized IGs must further consult with federal prosecutors before proceeding with an investigation to ensure that an allegation, if proven, would be prosecuted.

and the FBI to provide each other written notification involving areas of concurrent jurisdiction. The FBI has jurisdiction in all matters involving fraud against the federal government and jointly shares this jurisdiction with the deputized IGs in matters of fraud against each IG's agency. DOJ also requires the FBI or another federal law enforcement agency to assist the deputized IGs when conducting specific types of sensitive investigations, such as court-ordered electronic surveillance.¹³

According to the FBI, the purpose of these requirements is to provide oversight in order to (1) place limits on the authority of the deputized IGs' criminal investigators, and (2) help ensure compliance with applicable DOJ guidelines, and (3) address law enforcement coordination procedures for deputized IGs when conducting their criminal investigations.

Views of Deputized IGs and Other Federal Officials on Both Methods

As requested, we obtained views of deputized IGs and other federal officials on certain matters related to statutory authority and deputation. We found that deputized IGs prefer statutory authority to deputation and most believed statutory authority would improve their investigative practices at least to some extent. Most deputized IGs also reported that statutory authority would have little impact on their current statutory jurisdictions. Other federal officials generally believed that the current deputation process has improved. DOJ has not yet settled on its position on providing law enforcement authority to deputized IGs under either method. OMB deferred the matter for DOJ's consideration.

Deputized IGs' Views on Certain Matters Related to Statutory Authority

Fifteen of the 23 deputized IGs reported that having statutory authority would improve their criminal investigative practices to at least some extent and 9 of these reported that statutory authority would improve their investigative practices to a great or very great extent. Three of these believed that practices would be improved because statutory authority would enhance their investigators status as fully authorized officers in the law enforcement community. Further, 20 of the 23 deputized IGs reported that granting statutory authority would change their current jurisdiction of authority to little or no extent.

¹³ DOJ defines this category of cases to be any case involving the interception of communications pursuant to 18 U.S.C. Section 2510 et seq., electronic surveillance using closed circuit television in situations where a warrant is required, or any other court-ordered electronic surveillance.

Other Federal Officials' Views on Statutory and Deputation Law Enforcement Authority

In July 2000, DOJ and OMB testified at congressional hearings in favor of a legislative proposal that would have granted statutory authority to specified IG offices. However, the issue is currently under review within the Administration, and DOJ has not yet settled on its position as of May 2002. FBI officials we interviewed said that the deputation process is a much better system of conferring law enforcement authority to the IGs because it provides greater flexibility for DOJ and appropriately places oversight responsibilities at the Attorney General level. The Attorney General has the authority to delegate these responsibilities to Justice entities including DOJ's Criminal Division, FBI and USMS. The Attorney General has delegated this authority to USMS. Although the FBI reported no significant problems of abuse or misconduct from the deputized IGs, they continue to believe that deputation enables DOJ to ensure coordination in matters of concurrent jurisdiction. In responding to our questionnaire, OMB indicated that the issue of whether deputized IGs should be switched from deputation to statutory authority was a matter that DOJ would have to consider.

Officials with DOJ's Criminal Division, FBI, and USMS generally agree that recent improvements, including extending the deputation renewal cycle from 1 to 3 years, will ease the processing burden.

No Significant Cost or Savings Would Result from Switching Deputized IGs to Statutory Authority

Most deputized IGs believed no significant cost or savings would derive from conferring statutory authority to them. Eighteen of the 23 deputized IGs reported that no significant cost would be associated with switching them from deputation to statutory authority. The remaining 5 deputized IGs reported that some savings would be likely by eliminating administrative responsibilities associated with preparing, processing, and reviewing deputation requests and annual reports. USMS officials told us that about 2,000 of the approximately 7,500 depositions they authorize each year are for IG criminal investigators. This number will be cut by one-third in 2004 when renewals will be done every 3 years. However, USMS currently invests less than 4 staff years in its deputation responsibilities, so the overall impact on USMS's deputation process would be minimal. USMS would be able to reduce its workload (reviewing deputation requests) by about 27 percent annually. However, beginning in January 2004, USMS will begin renewing IGs' deputation on a 3-year cycle.

Officials at DOJ concurred that the cost and any savings associated with switching from deputation to statutory authority would be minimal.

In addition, the CBO provided a cost estimate for a proposed bill (S. 3144) during the 106th Congress that would have granted statutory authority to specified IG offices. Because the bill would have codified powers already exercised by deputized IGs, and replaced one system of review and oversight with another, CBO estimated that implementing it would have no significant effect on federal costs. CBO told us that any costs would be less than \$500,000. However, CBO told us they did not consider the potential cost related to peer review. The vice chair of the President's Council on Integrity and Efficiency¹⁴ said at hearings that a legislative proposal to grant permanent statutory law enforcement authority to deputized IGs would have carried with it no additional costs, in part because the deputized IGs' criminal investigators already (1) exercised law enforcement authority through deputation, (2) trained as criminal investigators, and (3) participated in the federal law enforcement retirement system. Officials at OMB and CBO agreed with this cost assessment.

Conclusions

With the exception of DOJ's imposed oversight requirements, we could not identify any other significant differences relating to law enforcement authority between the three IGs with statutory authority and the 23 deputized IGs. To some extent, DOJ has eased its requirements by extending the deputation renewal cycle from 1 to 3 years. In addition, DOJ concedes that its requirement for annual reports from deputized IGs has become outdated, and DOJ is reassessing the need for the requirement. Some deputized IGs believe that their status would be enhanced if they were statutorily authorized.

Agency Comments

We received comments on a draft of this report from the PCIE (which presents the views of the IG community), and DOJ. The PCIE's March 18, 2002, comments and DOJ's March 25, 2002, comments are in appendixes III and IV, respectively. The PCIE disagreed with our report message. DOJ neither agreed nor disagreed with our report. Officials from these organizations also provided technical comments, which were incorporated into the report as appropriate.

¹⁴The vice-chair of the council, accompanied by the chairpersons of the council's Legislation Committee and the Investigation Committee, testified regarding legislative proposals and issues relevant to the operations of the inspectors general, before the Senate Committee on Governmental Affairs, 106th Congress, (2000).

PCIE

The PCIE felt that GAO should have focused on determining which means of providing law enforcement authority to IGs would foster the most effective investigative process. We were not requested to address this issue and therefore it was not within the scope of our work. We did however survey all 23 IGs and obtained their views on providing law enforcement authority (see our survey results on p. 8).

The PCIE disagreed with our methodology comparing presidentially appointed IGs' deputation with statutory law enforcement authority. They stated that we should have compared deputized IGs' law enforcement authority to S. 3144 rather than the statutes that granted law enforcement authority to IGs at DOD, USDA, and TIGTA. The PCIE stated that S. 3144's provisions included, among other things, the statutory law enforcement authority that they are seeking. Because legislative proposals, including proposals from a previous session of Congress, are subject to change, we do not believe it is appropriate to use S. 3144 as the basis of comparison. Moreover, based on our analysis, law enforcement authority—the authority to carry firearms, make certain arrests, and execute warrants—proposed under S. 3144 is essentially the same as granted by statute to IGs at DOD, USDA, and TIGTA. In addition, the PCIE claimed that the deputation renewal process caused an administrative burden on USMS. Our work did not support such a conclusion. The USMS told us that the deputation process has improved and that renewing deputized IGs' law enforcement authority was the easiest task of their deputation workload.

The PCIE stated that the draft report seems to assume that, unless significant cost savings can be associated with permanent statutory law enforcement authority, temporary deputation should be retained. The PCIE said that it is a misperception that a decision on permanent statutory law enforcement authority for all IGs should be driven by cost considerations. We did not conclude or imply that significant cost savings should be a determining factor in deciding whether to switch deputized IGs to permanent statutory law enforcement authority. Rather, deputized IGs and other federal agencies including the CBO said that minimal costs or savings would result from switching from deputation to statutory authority. We were specifically asked by Congress to answer this question.

The PCIE also said that as part of its oversight mechanisms, the proposed bill (S. 3144) would have established a peer review process among deputized IGs. The PCIE said there are no known administrative burdens associated with this approach and its implementation would not increase federal expenditures. While the operational procedures of the peer review are not known, undoubtedly any review system would have some level of

administrative burden and costs. For example, the PCIE's draft peer review guidelines—"Guide for Conducting Qualitative Assessment Reviews of the Investigative Operations of Offices of Inspector General," among other things, recommends reviewing samples of IG criminal investigators' training and basic qualification records as well as closed investigative files to ensure adherence to professional law enforcement standards. According to the PCIE, depending on the size of the IG agency or level of detail of the review, a peer review cycle could take up to 120 days. The staff resources and activities related to scheduling, conducting, and reporting results of 23 IGs' "peer reviews" would incur time and costs.

On May 3, 2002 the PCIE provided further comments on our draft report. The PCIE continued to disagree with our draft report for the basic reasons stated in their earlier comments. Also, the PCIE requested that we defer issuance of the final report until we obtain and incorporate DOJ's current views. The PCIE said it had become aware that DOJ was close to making a decision and was optimistic that this decision will support a grant of statutory law enforcement authority to the deputized IGs. On May 7, 2002, DOJ told us that the matter is still under review within the administration with no estimated date of completion. As a result, we do not feel that it is appropriate to delay the report issuance. The PCIE also provided technical comments, which were incorporated into the report as appropriate.

DOJ

DOJ neither agreed nor disagreed with our draft report. DOJ requested that our report state that DOJ has not settled on a position on providing law enforcement authority through either statute or deputation and that the issue is under review within the Administration. We incorporated DOJ's suggestion into the report.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the acting assistant attorney general for administration; director, Office of Management and Budget; director, Congressional Budget Office; and the vice chairman, President's Council on Integrity and Efficiency. We will also make copies available to others upon request. This report will also be available on GAO's home page at <http://www.gao.gov>.

If you or your staff have any questions about this report, please call me or Weldon McPhail at (202) 512-8777. Other key contributors to this report

were Clarence Tull, Veronica Mayhand, Lou V.B. Smith, David Alexander, and Geoffrey Hamilton.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul L. Jones". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul L. Jones
Director, Justice Issues

Appendix I: IG Offices That Have Made Annual Deputation Requests and Received Law Enforcement Authority

This appendix lists the 23 presidentially appointed inspectors general (IGs) who have been granted deputation through calendar year 2000 for their respective criminal investigators by the Department of Justice.

Departments

Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Agencies

Agency for International Development
Environmental Protection Agency
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
General Services Administration
National Aeronautics and Space Administration
Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Small Business Administration
Social Security Administration

Appendix II: Data Collection Instrument of Presidentially Appointed Deputized IG Offices

Data Collection Instrument of Presidentialy Appointed Deputized IG Offices

United States General Accounting Office



Survey of Inspectors General Law Enforcement Authority

Introduction

The Chairman of the House Committee on Government Reform has asked the U.S. General Accounting Office (GAO) to examine the differences between providing law enforcement authority to the Presidentialy-appointed Inspectors General (IGs) through statute or blanket deputation. As part of this engagement, we are surveying each of the 23 presidentially appointed IG Offices about related issues, including the annual reports submitted by the IGs that are required by the Memorandum of Understanding (MOU) with the Department of DOJ (DOJ), the numbers of deputation applications, oversight of IG criminal investigators, and views about granting statutory law enforcement authority to IGs.

The person in your office who is most knowledgeable about these issues should complete this questionnaire. Answers to these questions will provide GAO with important information for our assessment of the differences between conferring law enforcement through statute or blanket deputation.

We urge you to complete this questionnaire and return it by August 17, 2001. Your office's participation is important! If you have any questions, please contact Ms. Veronica Mayhand at (404) 679-1869. Send the completed questionnaire to the following address:

U.S. General Accounting Office
Ms. Veronica Mayhand
2635 Century Parkway - Suite 700
Atlanta, Ga. 30345

Thank you very much for your assistance.

Please provide the following information for someone we can contact if follow-up inquiries are needed.

Name: _____
Title: _____
Agency: _____
Telephone: () _____
E-mail: _____

Note: This DCI was modified to capture the views of DOJ and OMB officials on providing law enforcement authority to the deputized IGs.

Appendix II: Data Collection Instrument of
Presidentially Appointed Deputized IG
Offices

Annual Reports

1. On what date did your office obtain its blanket law enforcement authority?

____ / ____
(Month) (Year)

January 1990 to September 1999

2. Since your office first received its law enforcement authority, has your office submitted an annual report each year on your law enforcement activities to DOJ?

- 1 ☐ Yes ➡ (Skip to Question 6.)
2 ☐ No

18
3
1 – Unknown
1 – Not applicable

3. If no, for how many years did your office not submit an annual report to DOJ? (Mark one.)

- 1 ☐ 1 year
2 ☐ 2 years
3 ☐ 3 years
4 ☐ 4 years or more

3
0
0
0

4. For each of the years in which your office did not submit an annual report, was your office granted a waiver or an extension by DOJ?

- 1 ☐ Yes
2 ☐ No ➡ (Skip to Question 6.)

2
1

5. If yes, please identify the applicable year(s) and briefly explain the circumstances under which your office was granted a waiver or extension.

6. For any of the annual reports your office has submitted, were any investigative activities, prosecutorial activities, or other elements exempted?

- 1 ☐ Yes
2 ☐ No ➡ (Skip to Question 9.)

1
21
1 – Not applicable

Appendix II: Data Collection Instrument of
Presidentially Appointed Deputized IG
Offices

7. Which reporting elements have been exempted from any of your office's annual reports?
(Mark all that apply.)

1 <input type="checkbox"/> Investigative activities	1
2 <input type="checkbox"/> Prosecutorial activities	1
3 <input type="checkbox"/> Other reporting elements, (Please specify)	1

8. Please briefly explain why reporting elements have been exempted from annual reports.

9. Given the current information requirements for annual reports, do you think that the types of information reported annually to DOJ should be changed?

1 <input type="checkbox"/> Yes	9
2 <input type="checkbox"/> No ➡ (Skip to Question 11.)	13
	1 – Not applicable

10. What different or additional types of information should be reported annually to DOJ?
(Please provide examples.)

11. Please send copies of any annual reports submitted for calendar years 1998, 1999, and 2000.

U.S. Marshal Service Investigator Applications

12. For the 3-year renewal extension of the MOU that began January 31, 2001, how many individuals did your office submit for deputation to the U.S. Marshals Service?

_____ (Total number)	9 to 243
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Appendix II: Data Collection Instrument of
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Oversight of Criminal Investigators

13. Under blanket deputation, does the U.S. Marshals Service provide any type of oversight over your office's criminal investigators' activities?

- 1 ☐ Yes 3
2 ☐ No ➡ (Skip to Question 15.) 19
1 – Not applicable

14. If yes, please briefly describe the oversight provided by the U.S. Marshal's Service.

15. Under blanket deputation, do any other entities outside your office provide any type of oversight over your office's criminal investigators' activities?

- 1 ☐ Yes 10
2 ☐ No ➡ (Skip to Question 18.) 12
1 – Not applicable

16. What other entity (ies) provide(s) this oversight?

17. Please briefly describe the oversight provided by the other entity (ies) as defined in question 16.

18. Who in your office is responsible for overseeing criminal investigators' activities?

**Appendix II: Data Collection Instrument of
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19. What specific measures are taken in your office to oversee criminal investigators' activities?

20. In terms of each of the following areas, please briefly indicate how, if at all, you believe the granting statutory law enforcement authority to your office's criminal investigators would affect their ability to exercise law enforcement authority?

Clarity:

Certainty:

Consistency between IG offices:

Oversight and accountability:

Continuity:

Other areas:

Views

21. In your opinion, to what extent, if at all, would granting statutory law enforcement authority to your office's criminal investigators improve their investigative practices? *(Mark one answer.)*

- | | |
|---|---|
| 1 <input type="checkbox"/> To a very great extent | 8 |
| 2 <input type="checkbox"/> To a great extent | 1 |
| 3 <input type="checkbox"/> To a moderate extent | 2 |
| 4 <input type="checkbox"/> To some extent | 4 |
| 5 <input type="checkbox"/> To little or no extent | 8 |

22. Please explain your response to question 21 concerning the extent to which statutory law enforcement authority would improve your office's criminal investigators' investigative practices.

23. In your opinion, to what extent, if at all, would granting statutory law enforcement authority to your office's criminal investigators change their current jurisdiction of authority? *(Mark one answer.)*

- | | |
|---|----|
| 1 <input type="checkbox"/> To a very great extent | 2 |
| 2 <input type="checkbox"/> To a great extent | 0 |
| 3 <input type="checkbox"/> To a moderate extent | 1 |
| 4 <input type="checkbox"/> To some extent | 0 |
| 5 <input type="checkbox"/> To little or no extent | 20 |

24. Please explain your response to question 23 concerning the extent to which statutory law enforcement authority would change your office's criminal investigators' current jurisdiction of authority.

**Appendix II: Data Collection Instrument of
Presidentially Appointed Deputized IG
Offices**

25. What costs, if any, would be associated with granting statutory law enforcement authority to your office's criminal investigators?

Other Comments

26. Please provide any additional comments about the provision of law enforcement through statute or blanket deputation your office might have in the space below.

Thank you for your assistance!

Appendix III: Comments from the President's Council on Integrity and Efficiency



PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

March 18, 2002

The Honorable David M. Walker
Comptroller General of the United States
441 G Street, NW
Room 7100
Washington, DC 20548

Dear Mr. Walker:

This letter provides the Inspector General (IG) community's response to General Accounting Office's (GAO) study of issues related to permanent statutory law enforcement authority and the current temporary blanket deputation authority for the Offices of Inspector General (OIGs). In developing this reply, we relied upon an undated draft "Statement of Facts" that was furnished to the PCIE Chair on approximately March 8, 2002. The actual draft report (GAO-02-437, "Inspectors General: Comparison of Ways Law Enforcement Authority Is Granted") was reviewed in our office this morning. However, we are committed to meeting the originally-stated response date of March 18, 2002, and have concluded that the second draft report reflects only minimal differences that do not alter our views on the underlying issues.

As you may readily appreciate, these matters are of paramount importance to the OIGs, and our entire membership has reacted strongly to the study. Our detailed comments—representing input from throughout the IG community—are in the document enclosed with this letter. It is structured to parallel the draft "statement of facts," but its comments are fully and equally applicable to the draft report.

While the enclosure disputes nearly every aspect of the draft, the OIGs' concerns appear to center on a relatively few conceptual issues affecting the conduct of the study and the development of its conclusions. I am highlighting these issues briefly, in the hope that we can bring these crucial issues more clearly into focus.

First, we believe it is a misperception that a decision on permanent law enforcement authority for all OIGs should be driven by cost considerations. Deputation is an inherently time- and labor-intensive ongoing process for both the Department of Justice (DOJ) and the OIGs. It is possible to conclude that replacing it with statutory authority could save some small amount of funds. The GAO draft seems to assume that, unless significant cost savings can be associated with permanent statutory law enforcement authority, the current temporary blanket deputation system should be retained. However, the financial outcomes—whatever they may be—will simply not have a budgetary impact

MAR 18 2002

The Honorable David M. Walker

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great enough to decide the issue either way. In our estimation, GAO should focus on determining which means of providing law enforcement authority to OIGs would foster the most effective investigative programs. If approached in this light, it is clear that statutory law enforcement authority is far more effective--for many reasons--and can be achieved at no cost, while perhaps generating savings through operating efficiencies.

Second, the methodology that GAO's analysts employed to compare the OIGs law enforcement authority under the temporary blanket deputation system with a permanent statutory system was flawed. The study uses the provisions of the current law enforcement authorities for OIGs in three specific agencies (Departments of Agriculture and Defense, and Treasury IG for Tax Administration) as its standard of comparison on the statutory side. In fact, the IG community is not seeking to obtain law enforcement authority under these provisions. The bill, S. 3144, 106th Congress (2000), which the draft mentions only in passing, reflects the actual statutory authority that we are seeking. We believe its provisions are the only bona fide standard to compare against the deputation system.

Every analytical conclusion in the draft was marred to some extent by this erroneous methodology. However, its worst effect was to generate the conclusion that the temporary blanket deputation system offers greater oversight and better professional standards than permanent statutory law enforcement authority. In fact, S. 3144 contained provisions for substantially more oversight by DOJ than the deputation system provides. As part of its oversight mechanisms, it would have established a peer review process among OIG investigative offices, a feature unique in federal law enforcement. OIGs have operated audit peer reviews under the IG Act for many years, and we believe they would serve an equally valuable oversight role in the investigative setting.

Among the other corollaries of the draft's methodological deficiencies is the implication that OIGs may favor statutory law enforcement authority as a means to free themselves from onerous oversight burdens. This is simply not the case. The bill, S. 3144, in which the covered IGs concurred, would retain, at a minimum, the current operational and training provisions of the MOUs. To these would be added peer review (discussed above) and any additional guidelines the Attorney General, in consultation with the FBI, opts to promulgate.

The inaccurate standards of comparison also tended to mask the inherent shortcomings of the deputation process. OIGs are keenly aware of them because of our reliance on deputation as the source of vital investigative authorities. In this context, situations such as the near loss of deputation by almost 2800 OIG special agents governmentwide in January 2001 because of the U.S. Marshals Service's administrative burdens represent serious, uncontrollable problems. Further, the vagaries of deputation as a means of receiving law enforcement authority are not limited to processes of the Marshals Service. For example, the 1995 deputation request of the Railroad Retirement Board (RRB)/OIG, was effectively denied by the refusal of two of the RRB's Board members to endorse it. The OIG was forced to continue obtaining deputation authority from DOJ under the very inefficient case by case basis. Despite the needs of its active and productive

The Honorable David M. Walker

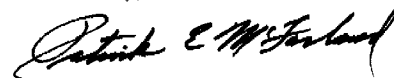
3

investigations program, the RRB/OIG did not receive blanket deputation authority until 1999, when the new RRB Chair gave the endorsement required by DOJ.

Finally, the draft indicates that the Office of Management and Budget deferred an official determination of this issue to DOJ. However, the draft does not present DOJ's position, instead describing the observations of unnamed FBI, Marshals Service, and Criminal Division officials who cannot speak for their agencies. Given that DOJ's views would be afforded great, if not dispositive weight, and that DOJ testified in favor of S. 3144 in July 2000, we believe that GAO should not forward its report to Congress until it can obtain an authoritative indication of DOJ's views.

Thank you for soliciting our concerns about this issue. We urge GAO to conduct further analysis using the appropriate statutory provisions and to reexamine its conclusions before finalizing this draft. If there are any questions, or if further information is needed, please do not hesitate to contact me.

Sincerely,



Patrick E. McFarland
Chair, Investigations Committee

Enclosures

cc: Paul L. Jones
Director, Justice Issues

Appendix IV: Comments from the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

MAR 25 2002

Mr. Paul Jones
Director
Justice Issues
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Jones:

This responds to your letter, dated March 15, 2002, which transmitted the General Accounting Office (GAO) draft report entitled, "INSPECTORS GENERAL: Comparison of Ways Law Enforcement Authority is Granted," to me with a request for comments by March 25, 2001. We appreciate your request for our views on the draft. We note that the draft indicates that we declined to render an official opinion during the review on the issue of law enforcement authority for Inspectors General. In fact, the issue is currently under review and the Administration has not yet settled on a position. Accordingly, we request that, in lieu of reporting that we have declined to provide a position, your report indicate that the issue is under review within the Administration at this time.

If you have any questions regarding these comments, please do not hesitate to contact Vickie L. Sloan, Director, Audit Liaison Office, Justice Management Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Diegelman", written over a large, stylized initial "R".

Robert F. Diegelman
Acting Assistant Attorney General
for Administration

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